

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION  
OPIATE LITIGATION

This document relates to:

*Track Three Cases*

MDL No. 2804  
Case No. 17-md-2804  
Judge Dan Aaron Polster

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DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR  
*DAUBERT* MOTION TO EXCLUDE  
THE OPINIONS OFFERED BY CALEB ALEXANDER

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Track 3 Plaintiffs retained Caleb Alexander, a practicing general internist and Professor of Epidemiology and Medicine, “to discuss ways to abate or reduce the harms caused by the opioid epidemic.” Alexander’s reported opinions are indeed primarily about abatement, and yet Plaintiffs listed Alexander as a Phase One witness. Phase One, of course, has only to do with the question of liability. *See* Doc. 3579 at \*2-4. Issues related to abatement will be relevant, if ever, only in the event there is a Phase Two. *See id.* at \*4. Therefore, the Court should exclude all of Alexander’s abatement opinions from the Phase One trial as irrelevant.<sup>1</sup> *See id.* at \*5 (holding “presentation of evidence during the two phases of trial will be limited accordingly”); F.R.E. 702(a) (“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if . . . the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.”).

Alexander also reported, “In addition to the Redress Models, I was asked to review the literature on certain potential indicators of high-risk opioid distribution and describe their evidence base. *See Appendix F.*” Rep. at 6. Alexander admits that the list of indicators in Appendix F were derived from the opinions of another of Plaintiffs’ experts, Carmen Catizone. Tr. at 141:8-13, 143:1-144:7.

Alexander also admits that his discussion of the indicators in Appendix F, standing alone, has no direct relevance to the issues in Track 3, as he has not in any way attempted to apply them to Defendants. Instead, to the extent anyone has made any effort to connect the Appendix F indicators to the facts of this case, that was done by Catizone or other experts. Tr. at 122:15-18

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<sup>1</sup> Defendants reserve the right to move to exclude Alexander’s abatement opinions on other grounds in accord with *Daubert* deadlines set in advance of the abatement phase, if any.

(“But my development of that appendix did not require me to evaluate the specific actions of pharmacies to date. And I would leave it to Mr. Catizone or other experts to do so.”), 156:1-10 (“Q. Did you study, in relation to Appendix F, and what you’ve placed in your – the contents of Appendix F, did you study the specific actions of any of the defendant pharmacies and their pharmacists related to Appendix F? A. Well, I reviewed Mr. Catizone’s report, and I believe he does so. But the development of my Appendix F did not require me or wasn’t predicated on having studied the specific actions of defendants in this case.”); *see also* id. at 156:15-157:12, 170:18-171:1, 174:14-176:9.

Defendants have moved to exclude Catizone’s opinions and testimony. If the Court grants that motion, even in part, it also should exclude Alexander’s related opinions as reported in Appendix F. Without a connection to Defendants, his opinions are irrelevant and would not assist the jury. *See* F.R.E. 702(d) (providing expert testimony is only admissible if “the expert has reliably applied the principles and methods to the facts of the case”); *see also Nelson v. Tenn. Gas Pipeline Co.*, 243 F.3d 244, 250-54 (6th Cir. 2001) (excluding expert opinion on possible causes of plaintiffs’ harm because the expert’s opinions left too many unaddressed gaps in the proposed causation chain).

For these reasons, the Court should exclude Alexander’s abatement opinions as irrelevant in this phase and exclude his Appendix F indicators opinions as irrelevant and unhelpful to the extent it also excludes Catizone’s related opinions.

Dated: July 23, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record on July 23, 2021.

*/s/ Scott D. Livingston*